



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R07-OAR-2021-0667; FRL-9105-01-R7]

Air Plan Approval; Missouri Redesignation Request and Associated Maintenance Plan for the Jackson County 2010 SO₂ 1-Hour NAAQS Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 18, 2021, the State of Missouri submitted a request for the Environmental Protection Agency (EPA) to redesignate the Jackson County, Missouri, 2010 1-hour sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS) nonattainment area to attainment and approve a State Implementation Plan (SIP) revision containing a maintenance plan for the area. The State provided a supplement to the maintenance plan on September 7, 2021. In response to these submittals, the EPA is proposing to take the following actions: approve the State's plan for maintaining attainment of the 2010 1-hour SO₂ primary standard in the area; and approve the State's request to redesignate the Jackson County SO₂ nonattainment area to attainment for the 2010 1-hour SO₂ primary standard. This redesignation action, if finalized, will address the EPA's obligation under a consent decree which establishes a deadline of March 31, 2022 for the EPA to determine under Clean Air Act (CAA) section 179(c) whether the Jackson County SO₂ nonattainment area attained the NAAQS by the October 4, 2018 attainment date.

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-R07-OAR-2021-0667 to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Written Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Wendy Vit, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551-7697 or by email at vit.wendy@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to the EPA.

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2021-0667, at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from [regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Have the Requirements for Approval of a SIP Revision Been Met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The February 18, 2021 SIP submittal included a redesignation request and a maintenance plan, consisting of a maintenance demonstration based on air

dispersion modeling, an attainment emissions inventory, contingency plan and other required elements. The State provided public notice on the February 18, 2021 SIP submittal from November 2, 2020 to December 10, 2020 and held a public hearing on December 3, 2020. The State received and addressed three comments from one source (the EPA). The State revised the maintenance plan based on public comment prior to submitting to the EPA.

On September 7, 2021, Missouri submitted a supplement to the maintenance plan consisting of a Consent Agreement between Missouri and Vicinity Energy - Kansas City (Vicinity, formerly Veolia-Kansas City) and an updated air dispersion modeling demonstration to support the redesignation. Missouri held a public hearing for this maintenance plan supplement on July 29, 2021 and made the supplement available for public review and comment from June 28, 2021 through August 5, 2021. Missouri did not receive any public comments.

In addition, as explained in later sections (and in more detail in the technical support document (TSD) which is included in the docket for this action), the maintenance plan meets the substantive SIP requirements of the Clean Air Act (CAA), including section 110 and implementing regulations.

III. What is the Background for the EPA's Proposed Actions?

On June 22, 2010, the EPA revised the primary SO₂ NAAQS, establishing a new 1-hour standard of 75 parts per billion

(ppb).¹ Under the EPA's regulations at 40 CFR part 50, the 2010 1-hour SO₂ NAAQS is met at a monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations is less than or equal to 75 ppb (based on the rounding convention in 40 CFR part 50, appendix T).² Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. A year meets data completeness requirements when all four quarters are complete, and a quarter is complete when at least 75 percent of the sampling days for each quarter have complete data. A sampling day has complete data if 75 percent of the hourly concentration values, including State-flagged data affected by exceptional events which have been approved for exclusion by the Administrator, are reported.³

Upon promulgation of a new or revised NAAQS, the CAA requires the EPA to designate as nonattainment any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS.⁴ On August 5, 2013, the EPA designated a portion of Jackson County, Missouri, as nonattainment in Round 1 of the designations for the 2010 1-hour primary SO₂ NAAQS, effective October 4, 2013.⁵ The designation was based on 2009-2011 monitoring data from the Troost monitor in Kansas City, Missouri, showing violations of the standard (see section V of this document for additional monitoring

¹ See 75 FR 35520 (June 22, 2010).

² See 40 CFR 50.17.

³ 40 CFR part 50, appendix T, section 3(b).

⁴ CAA section 107(d)(1)(A)(i).

⁵ 78 FR 47191 (August 5, 2013), codified at 40 CFR 81.326.

information). This action established an attainment date five years after the effective date of designation for the Round 1 nonattainment areas for the 2010 SO₂ NAAQS (i.e., by October 4, 2018). The State was also required to submit a SIP for the Jackson County SO₂ nonattainment area to the EPA that meets the requirements of CAA sections 110, 172(c) and 191-192 within 18 months following the October 4, 2013, effective date of designation (i.e., by April 4, 2015).

The State of Missouri submitted the "Nonattainment Area Plan for the 2010 1-Hour Sulfur Dioxide National Ambient Air Quality Standard-Jackson County Sulfur Dioxide Nonattainment Area" on October 16, 2015, and subsequently withdrew the plan on June 11, 2018, except for the baseline emissions inventory.

On May 4, 2018, the State submitted a request for the EPA to determine that the Jackson County SO₂ nonattainment area attained the 2010 1-hour primary SO₂ NAAQS per the EPA's Clean Data Policy. The clean data policy represents the EPA's interpretation that certain planning-related requirements of part D of the Act, such as the attainment demonstration, reasonably available control measures (RACM), and reasonable further progress (RFP), are suspended for areas that are in fact attaining the NAAQS. A determination of attainment, or clean data determination, does not constitute a formal redesignation to attainment. If the EPA subsequently determines that an area is no longer attaining the standard, those requirements that

were suspended by the clean data determination are once again due.

On April 15, 2020, the EPA published a notice of proposed rulemaking to approve the State's request for a clean data determination.⁶ The proposal was based on 2016-2018 monitoring data - the Troost monitor design value (dv) was 11 parts per billion (ppb)- and modeling data (2016-2018 actual emissions). After considering public comments received, the EPA published a Notice of Final Rulemaking (NFRM) approving the State's request for a clean data determination in the *Federal Register* on July 9, 2020.⁷

On February 18, 2021, the State submitted a request for redesignation of the Jackson County SO₂ nonattainment area to attainment and a SIP revision containing a 10-year maintenance plan for the area. On September 7, 2021, the State submitted a supplement to the maintenance plan, including a Consent Agreement with Vicinity and an updated modeling demonstration to reflect the new fuel restrictions. This proposal document discusses the EPA's review of the redesignation request, the maintenance plan, and the supplemental information and provides support for the EPA's proposed approval of the maintenance plan and request to redesignate the area to attainment. Additional analysis of the redesignation request, maintenance plan, consent agreement, and supplemental modeling information is provided in

⁶ See 85 FR 20896.

⁷ See 85 FR 41193.

a Technical Support Document (TSD) included in the docket to this proposed rulemaking.⁸

This redesignation action, if finalized, will address EPA's obligation under a consent decree in *Center for Biological Diversity, et al. v. Regan*, which establishes a deadline of March 31, 2022 for the EPA to determine under CAA section 179(c) whether the Jackson County SO₂ nonattainment area attained the NAAQS by the October 4, 2018 attainment date.⁹ Under the terms of the consent decree, final redesignation of the area to attainment before March 31, 2022, would automatically terminate the EPA's obligation to make this determination under CAA section 179(c).

IV. What are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation of a nonattainment area provided that: (1) the Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions

⁸ The TSD discusses the EPA's review of some of the CAA section 107(d)(3)(E) redesignation criteria: 107(d)(3)(E)(i) a determination of attainment; 107(d)(3)(E)(iii) a determination that the improvement in air quality is due to permanent and enforceable reductions in emissions; and 107(d)(3)(E)(iv) a fully approved maintenance plan per CAA section 175A. The discussion also covers some of the submitted maintenance plan's elements: 1) attainment inventory; 2) maintenance demonstration; and 3) continued monitoring. The EPA's review of the remaining redesignation and maintenance plan criteria are sufficiently addressed in the preamble language to this proposed rule.

⁹ *Center for Biological Diversity, et al. v. Regan*, No. 3:20-cv-05436-EMC (N.D. Cal. June 25, 2021).

resulting from implementation of the applicable SIP and applicable federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

V. What is the EPA's Analysis of the Request?

The EPA's evaluation of Missouri's redesignation request and maintenance plan is based on consideration of the five redesignation criteria provided under CAA section 107(d)(3)(E) and relevant guidance. On April 16, 1992, the EPA provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990, and the EPA supplemented this guidance on April 28, 1992.^{10,11} The EPA has provided further guidance on processing redesignation requests in several guidance documents. For the purposes of this action, the EPA will be referencing two of these documents: (1) The September 4, 1992 memo "Procedures for Processing Requests to Redesignate Areas to Attainment" (Calcagni Memo); and (2) the EPA's April 23, 2014 memorandum "Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions" (2014 SO₂ Guidance).¹²

Criterion (1)—The Jackson County SO₂ Nonattainment Area Has Attained the 2010 1-Hour SO₂ NAAQS

¹⁰ See 57 FR 13498.

¹¹ See 57 FR 18070.

¹² https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf

For redesignating a nonattainment area to attainment, the CAA requires the EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). The EPA determined that the area attained the 2010 1-hour SO₂ NAAQS in its July 2020 NFRM approving the State's request for a clean data determination meeting the requirements of CAA section 107(d)(3)(E)(i). That determination was primarily based on monitoring data and a modeling analysis of recent actual emissions for sources in and around the nonattainment area. As described further in the TSD for this action, the February 2021 maintenance plan, as well as the September 2021 supplemental maintenance plan information, are based on modeling demonstrations of permanent and enforceable emissions for sources in the nonattainment area that demonstrate the area is attaining the standard. Therefore, the EPA's 2020 determination that the area had achieved clean data is consistent with the proposed action to redesignate the area.

For this proposal, the EPA reviewed quality assured monitoring data recorded in the EPA's Air Quality System (AQS) from the Troost monitoring station. The 3-year, 2018-2020 design value for the Troost monitor is 7 ppb, which continues to meet the 2010 1-hour SO₂ NAAQS, as shown in Table 1. If the 3-year design value violates the NAAQS prior to the EPA acting in response to the State's request, the EPA will not take final action to approve the redesignation request.¹³ As discussed in

¹³ See 2014 SO₂ Guidance, at page 56.

more detail later in this section, Missouri has committed to continue monitoring in this area in accordance with 40 CFR part 58.

Table 1. 2015-2020 Troost Street Monitor Data (parts per billion (ppb)); 99th Percentile (99th %) and 3-year design value (dv)										
Site	2015 99th %	2016 99th %	2017 99th %	2018 99th %	2019 99th %	2020 99th %	2015- 2017 dv	2016- 2018 dv	2017- 2019 dv	2018- 2020 dv
Troost	142	9.4	18.4	6.1	6.5	7.1	57	11	10	7

Criterion (2)–Missouri Has a Fully Approved SIP Under Section 110(k); and Criterion (5)–Missouri Has Met All Applicable Requirements Under Section 110 and Part D of Title I of the CAA

For redesignating a nonattainment area to attainment under a NAAQS, the CAA requires the EPA to determine that the State has met all applicable requirements for that NAAQS under section 110 and part D of title I of the CAA (CAA section 107(d) (3) (E) (v)) and that the State has a fully approved SIP under section 110(k) for that NAAQS for the area (CAA section 107(d) (3) (E) (ii)). The EPA proposes to find that Missouri has met all applicable SIP requirements for purposes of redesignation for the Jackson County SO₂ nonattainment area under section 110 of the CAA (general SIP requirements). Additionally, the EPA proposes to find that the Missouri SIP satisfies the criterion that it meets applicable SIP requirements for purposes of redesignation under part D of title I of the CAA in accordance with section 107(d) (3) (E) (v). Further, the EPA proposes to determine that the SIP is fully approved with

respect to all requirements applicable for the 2010 1-hour SO₂ NAAQS for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In proposing to make these determinations, the EPA ascertained which requirements are applicable to the Jackson County SO₂ nonattainment area and, if applicable, that they are fully approved under section 110(k).

a. The Jackson County SO₂ Nonattainment Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

General SIP requirements. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the State after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emissions control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, the EPA has required certain States to

establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D) requirements for a State are not linked with a nonattainment area's designation and classification in that State. The EPA has determined that the requirements linked with a nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a State regardless of the designation of any one area in the State. Thus, the EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, the EPA has determined that other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with an area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with the EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements.¹⁴

¹⁴ See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174-53176, October 10, 1996), (62 FR 24826, May 7, 2008); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the

Title I, part D, applicable SIP requirements. Section 172(c) of the CAA sets forth the basic requirements of attainment plans for nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 5 of part D, which includes section 191 and 192 of the CAA, establishes requirements for SO₂, nitrogen dioxide and lead nonattainment areas. A thorough discussion of the requirements contained in section 172(c) can be found in the General Preamble for Implementation of Title I.¹⁵

Section 172 and subpart 5 requirements. Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable and to provide for attainment of the NAAQS. The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Under section 172, States with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements.

The EPA's longstanding interpretation of the nonattainment planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not "applicable" for purposes of CAA section 107(d)(3)(E)(ii) and (v) and therefore

Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

¹⁵ See 57 FR 13498.

need not be approved into the SIP before the EPA can redesignate the area. In the 1992 General Preamble for Implementation of Title I, the EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard.¹⁶ The EPA noted that the requirements for RFP and other measures designed to provide for attainment do not apply in evaluating redesignation requests because those nonattainment planning requirements “have no meaning” for an area that has already attained the standard.¹⁷ This interpretation was also set forth in the Calcagni Memo. The EPA's interpretation of section 172 also forms the basis of its Clean Data Policy, which was articulated with regard to the 2010 1-hour SO₂ NAAQS in the EPA's 2014 SO₂ Guidance, and suspends a State's obligation to submit most of the attainment planning requirements that would otherwise apply, including an attainment demonstration and planning SIPs to provide for RFP, RACM, and contingency measures under section 172(c)(9). Courts have upheld the EPA's interpretation of section 172(c)(1) for “reasonably available” control measures and control technology as meaning only those controls that advance attainment, which precludes the need to require additional measures where an area is already attaining.¹⁸

¹⁶ See 57 FR 13498, 13564.

¹⁷ *Id.*

¹⁸ *NRDC v. EPA*, 571 F.3d 1245, 1252 (D.C. Cir. 2009); *Sierra Club v. EPA*, 294 F.3d 155, 162 (D.C. Cir. 2002); *Sierra Club v. EPA*, 314 F.3d 735, 744 (5th Cir. 2002); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). But see *Sierra Club v. EPA*, 793 F.3d 656 (6th Cir. 2015).

Therefore, because the Jackson County SO₂ nonattainment area is currently attaining the 2010 1-hour SO₂ NAAQS, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements for an attainment demonstration and RACM are not part of the "applicable implementation plan" required to have been approved prior to redesignation per CAA section 107(d)(3)(E)(ii) and (v). The other section 172 requirements that are designed to help an area achieve attainment—the section 172(c)(2) requirement that nonattainment plans contain provisions promoting reasonable further progress, the requirement to submit the section 172(c)(9) contingency measures, and the section 172(c)(6) requirement for the SIP to contain control measures necessary to provide for attainment of the NAAQS – are also not required to be approved as part of the "applicable implementation plan" for purposes of satisfying CAA section 107(d)(3)(E)(ii) and (v).

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. The requirement for an emissions inventory can be satisfied by meeting the inventory requirements of the maintenance plan.¹⁹ However, when the State withdrew its attainment plan for the area in June 2018, it did not withdraw the baseline emissions inventory submitted with that plan. On November 23, 2018, the EPA published a notice of proposed rulemaking in the *Federal Register* proposing to approve that the

¹⁹ Calcagni Memo at 6.

State met the section 172(c)(3) requirement to submit an emissions inventory for the Jackson County SO₂ nonattainment area.²⁰ On February 13, 2019, the EPA published a final rulemaking in the *Federal Register* approving the State's emissions inventory for the Jackson County SO₂ nonattainment area.²¹

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. The State has an approved nonattainment NSR program.²² Regardless, the State has demonstrated that the Jackson County SO₂ nonattainment area will be able to maintain the NAAQS as its Prevention of Significant Deterioration (PSD) program will remain in effect upon redesignation to attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, the EPA proposes to find that the Missouri SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Section 176 conformity requirements. Section 176(c) of the CAA requires States to establish criteria and procedures to ensure that federally supported or funded projects conform to

²⁰ See 83 FR 59348.

²¹ See 84 FR 3703.

²² See 81 FR 70025 (October 11, 2016).

the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with federal conformity regulations relating to consultation, enforcement, and enforceability that the EPA promulgated pursuant to its authority under the CAA.

Missouri has an approved general conformity SIP.²³ Moreover, the EPA interprets the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because, like other requirements listed above, State conformity rules are still required after redesignation and federal conformity rules apply where State rules have not been approved.²⁴

As noted in the 2014 SO₂ Guidance, transportation conformity is required under CAA section 176(c) to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of the SIP. Transportation conformity applies to areas that are designated nonattainment, and those areas redesignated to attainment ("maintenance areas" with plans developed under CAA section 175A) for transportation-

²³ See 78 FR 57267 (September 18, 2013).

²⁴ See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); see also 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida).

related criteria pollutants. Due to the relatively small, and decreasing, amounts of sulfur in gasoline and on-road diesel fuel, the EPA's conformity rules provide that they do not apply to SO₂ unless either the EPA Regional Administrator or the director of the State air agency has found that transportation-related emissions of SO₂ as a precursor are a significant contributor to a PM_{2.5} nonattainment problem, or if the SIP has established an approved or adequate budget for such emissions as part of the RFP, attainment or maintenance strategy.²⁵ Neither the EPA nor Missouri has made such a finding for transportation related emissions of SO₂ for the Jackson County SO₂ nonattainment area.

For these reasons, the EPA proposes to find that Missouri has satisfied all applicable requirements for purposes of redesignation of the Jackson County SO₂ nonattainment area under section 110 and part D of title I of the CAA.

b. The Jackson County SO₂ Nonattainment Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

The EPA has fully approved the applicable Missouri SIP for the Jackson County SO₂ nonattainment area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. As indicated above, the EPA has determined that the section 110 elements that are neither connected with nonattainment plan submissions nor linked to an area's attainment status are not applicable requirements for purposes

²⁵ See 40 CFR 93.102(b)(1), (2)(v).

of redesignation. The EPA has approved all part D requirements applicable under the 2010 SO₂ NAAQS, as identified above, for purposes of this redesignation.

Criterion (3)—The Air Quality Improvement in the Jackson County SO₂ Nonattainment Area Is Due to Permanent and Enforceable Reductions in Emissions

For redesignating a nonattainment area to attainment, the CAA requires the EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable federal air pollution control regulations, and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). The EPA proposes to find that Missouri has demonstrated that the observed air quality improvement in the Jackson County SO₂ nonattainment area is due to permanent and enforceable reductions in emissions.

Specifically, the EPA considers the fuel switch at Vicinity from the combustion of coal to natural gas to be permanent and enforceable. In 2016, Missouri issued a construction permit to Vicinity (formerly Veolia) that included a condition to exclusively burn natural gas in boilers 1A, 6, and 8. In addition, Vicinity's Title V operating permit contains a condition that limits boiler 7 to combusting natural gas only. Missouri could have submitted these permits to the EPA for inclusion in the SIP to make these federally enforceable conditions permanent, but Missouri has elected to enter into a

Consent Agreement with Vicinity and submit that Consent Agreement for approval into the SIP as Appendix 1 of the September 2021 supplement to the maintenance plan. This will also make the Consent Agreement federally enforceable. The Consent Agreement prohibits Vicinity from combusting coal in boilers 1A, 6, 7 and 8. It also allows Vicinity to utilize natural gas, ultra-low sulfur diesel (ULSD) containing no more than 15 parts per million (ppm) sulfur by volume, biofuel containing no more than 15 ppm sulfur by volume, or a blend of biofuel and ULSD containing no more than 15 ppm sulfur by volume, as long as the facility obtains any necessary air permits in the future. While the Consent Agreement may be terminated under state law by mutual agreement by both parties at the current time, this action, once finalized, would approve that Agreement into the SIP. At that point the requirements of the Consent Agreement would be permanent and federally enforceable and would remain applicable until Missouri submits a SIP revision and the EPA approves that revision. That revision would be subject to CAA section 110(1), i.e., the state must demonstrate that the revision would not interfere with the attainment or maintenance of any NAAQS.

Vicinity transitioned to natural gas beginning in 2016 and ceased burning coal completely in 2017, which significantly reduced its SO₂ emissions and impacts on the Troost monitor. The Troost monitor came into compliance with the 2010 1-hour SO₂ standard during 2015-2017 following Vicinity's cessation of coal

burning, and the monitor has remained in compliance since that time. Given the well-established correlation of much lower SO₂ emissions and SO₂ concentrations at the Troost monitor after Vicinity ceased burning coal, the EPA anticipates that the 2010 1-hour SO₂ NAAQS will continue to be attained. See Table 1 for recent monitoring data trends at this monitor.

The State's initial modeling demonstration in the February 2021 maintenance plan assumed that Vicinity burns natural gas in boilers 1A, 6 and 8 and fuel oil with a sulfur content of 100 ppm in boiler 7. Boiler 7 was not modeled as running on natural gas because the natural gas requirement for Boiler 7 is only found in Vicinity's operating permit, which would not be considered permanent since Title V permits are only effective for five years and therefore must be renewed every five years. In the September 2021 maintenance plan supplement, the State updated the modeling demonstration based on the provision of the Consent Agreement allowing Vicinity to burn ULSD with a sulfur content of 15 ppm in all four of its boilers. Both the initial maintenance plan modeling demonstration and the updated modeling demonstration submitted with the maintenance plan supplement show compliance with the 2010 SO₂ standard throughout the entire Jackson County nonattainment area.

In addition to the Vicinity facility, the State explicitly modeled all permitted emission sources inside the nonattainment area based on assuming continuous operation at their maximum permitted emission levels for the five-year period from 2014-

2018. These are the same sources located in the nonattainment area that were included in the clean data determination modeling analysis for the Jackson County SO₂ nonattainment area. The State also explicitly modeled two sources located outside the nonattainment area: the Evergy-Hawthorn power plant (Hawthorn) and the Ingredion facility, which produces modified corn starches and other food ingredients. Hawthorn was modeled as a nearby source per the EPA guidelines listed in Table 8.1 of 40 CFR part 51, appendix W, which states that nearby sources should be modeled based on their allowable emission rate, with adjustments to reflect actual operational levels. Ingredion was modeled at its maximum allowable emission rate, which is the same method used for all permitted sources located inside the nonattainment area. The only difference between the initial modeling demonstration submitted with the February 2021 maintenance plan and the September 2021 updated modeling demonstration is the derivation of Vicinity's emission rates as described above.

The EPA is proposing to find that the modeling results demonstrate attainment and continued maintenance of the NAAQS and that the air quality improvement in the Jackson County SO₂ nonattainment area is due to permanent and enforceable reductions in emissions. Please see the TSD for details of the modeling inputs and additional discussion of the air quality modeling. The input files used in the modeling demonstration are

available by request from the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Criterion (4)–The Jackson County SO₂ Nonattainment Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

To redesignate a nonattainment area to attainment, the CAA requires the EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the Jackson County SO₂ nonattainment area to attainment for the 2010 1-hour SO₂ NAAQS, the State submitted a SIP revision to provide for the maintenance of the 2010 1-hour SO₂ NAAQS for at least 10 years after the effective date of redesignation to attainment. The EPA is proposing to find that this maintenance plan for the area meets the requirements for approval under section 175A of the CAA.

a. What is Required in a Maintenance Plan?

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation request to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility

of future NAAQS violations, the maintenance plan must contain contingency measures as the EPA deems necessary to assure prompt correction of any future 2010 1-hour SO₂ violations. The Calcagni Memo provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully later in this section, the EPA is proposing to determine that Missouri's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Missouri SIP.

b. Attainment Emissions Inventory

As part of a State's maintenance plan, the air agency should develop an attainment inventory to identify the level of emissions in the affected area which is enough to attain and maintain the SO₂ NAAQS.²⁶ The EPA is proposing to approve that Missouri has met this requirement through modeling of permanent and enforceable emission limits that will result in continued attainment and maintenance of the NAAQS. Missouri also provided emissions inventories as part of the maintenance plan. Specifically, Missouri selected 2017 as the attainment emissions inventory year for developing an emissions inventory for SO₂ in the nonattainment area through the 10-year maintenance period. Please see the TSD included in the docket for this action for details of the base year and attainment year emissions

²⁶ See 2014 SO₂ Guidance, at page 66.

inventories and the EPA's review of these inventories. The TSD also details the EPA's review of the modeling demonstration provided by Missouri which forms the basis for the EPA's approval of this maintenance plan requirement.

c. Maintenance Demonstration

The Calcagni memo describes two ways for a State to demonstrate maintenance of the NAAQS for a period of at least 10 years following the redesignation of the area: 1) the State can show that future emissions of a pollutant will not exceed the level of the attainment inventory, or 2) the State can model to show that the future mix of sources and emission rates will not cause a violation of the standard. The memo goes on to say that areas that are required to model to demonstrate attainment of the standard should complete the same level of modeling to demonstrate that the permanent and enforceable emissions are enough to maintain the standard. The State performed several modeling iterations to demonstrate that the standard will be maintained. In its February 2021, and September 2021, supplemental modeling, Missouri has demonstrated maintenance by modeling all sources inside of the nonattainment area at their permanent, enforceable, allowable emission rates; nearby sources at their permanent, enforceable, allowable emission rates (with actual operating conditions for 2014-2018 for the Hawthorn power plant); and other sources addressed through the use of a background concentration. The EPA proposes that the supplemental modeling provided by Missouri demonstrates the standard will be

attained and maintained for at least 10 years following redesignation of the area, consistent with the second method outlined in the Calcagni memo by which a State may demonstrate maintenance of the NAAQS. Please see the TSD for details of the modeling inputs, results and the EPA's review of them. The EPA is proposing to approve Missouri's maintenance plan including the supplemental modeling as meeting the maintenance demonstration requirement.

d. Monitoring Network

Missouri has committed to continue operating the "appropriate SO₂ network in the Jackson County nonattainment area" in accordance with the requirements of 40 CFR part 58, and approved annual monitoring network plans, to verify the attainment status of the area. The State committed to quality assure the data in accordance with 40 CFR part 58 and submit the data to the EPA's air quality system (AQS). The maintenance plan, consistent with the State's 2020 annual ambient monitoring network plan, indicate that the Troost monitor is the only State and Local Air Monitoring Station (SLAMS) or SLAMS-like monitor operational in the nonattainment area.²⁷

e. Verification of Continued Attainment

Each air agency should ensure that it has the legal authority to implement and enforce all measures necessary to attain and maintain the 2010 SO₂ NAAQS. The air agency's submittal should indicate how it will track the progress of the

²⁷ See Missouri's 2020 Ambient Monitoring Network Plan contained in the docket for this action.

maintenance plan for the area either through air quality monitoring or modeling.²⁸

Missouri has the legal authority to enforce and implement the maintenance plan for the Jackson County 2010 SO₂ nonattainment area. This includes the authority to adopt, implement, and enforce any subsequent emissions control contingency measures determined to be necessary to correct future SO₂ attainment problems.²⁹ As noted, the State will track the progress of the maintenance plan by continuing to operate the Troost monitor. Additionally, the State committed to provide future inventory updates to track emissions during the 10-year maintenance period. State Regulation 10 CSR 10-6.110, *Reporting Emission Data, Emission Fees, and Process Information*, (which is SIP approved) requires that all installations with a construction or operating permit report its annual emissions to the State. The methods for calculating and reporting emissions are detailed in each installation's applicable permit. The data collected on emissions inventory questionnaires from permitted sources form the basis of the point source emissions inventory that is compiled annually.³⁰ In addition, in compliance with the EPA's Air Emissions Reporting Requirements [80 FR 8787], Missouri develops a comprehensive emissions inventory of point, area, and mobile sources every 3 years. This triennial inventory compiled by the State is contained in the EPA's national

²⁸ See 2014 SO₂ Guidance at pages 67-68.

²⁹ The EPA last determined that Missouri's SIP was sufficient to meet the requirements of section 110(a)(2)(E)(i) of the CAA on March 22, 2018 (83 FR 12496).

³⁰ This information is available to the EPA or members of the public upon request from the State of Missouri.

emissions inventory (NEI) which is made publicly available every 3 years. For these reasons, the EPA is proposing to find that Missouri's maintenance plan meets the "Verification of Continued Attainment" requirement.

f. Contingency Measures in the Maintenance Plan

Section 175A of the CAA requires that a maintenance plan include such contingency measures as the EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the State. A State should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must also include a requirement that a State will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

The contingency plan includes a triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. The triggering mechanisms contained in the maintenance plan are based on monitoring data from the Troost monitor. The EPA proposes to find it appropriate to rely on monitoring data to trigger the contingency plan because the Troost monitor is being

relied upon to demonstrate continued maintenance in the area as discussed in the Monitoring Network section of this document.

The State listed two types of triggers of its contingency plan. The first, a "warning level response," will be triggered by a 99th percentile of daily maximum 1-hour average SO₂ concentrations greater than 90 ppb in a single calendar year in the Jackson County maintenance area. The second, an "action level response," will be triggered if a violation of the NAAQS is recorded in the Jackson County maintenance area, specifically if the 3-year average of annual 99th percentile daily maximum 1-hour concentrations is 76 ppb or higher.

If the warning level response is triggered, a study must be completed to determine whether the monitored SO₂ value indicates a trend toward higher concentrations in the Jackson County maintenance area. Specifically, the study will evaluate whether emissions appear to be increasing and whether control measures are needed to reverse the trend. The study shall be completed as expeditiously as possible, but no later than 12 months after the State has determined that a warning level response has been triggered. Any necessary control measures would be implemented within 24 months of the submission of certified monitoring data triggering the warning level response.

If the action level response is triggered and is not due to an exceptional event as defined at 40 CFR 50.1(j), measures to address the violation shall be implemented as expeditiously as possible, but no later than 24 months after quality-assured

ambient data has been entered into the AQS database indicating that this trigger has occurred. If the exceedance is not due to an exceptional event, malfunction, or noncompliance with a permit condition or rule requirement, the State will conduct a study to determine additional control measures needed to return the area to attainment of the 2010 SO₂ standard. The study will be completed within six months following the action-level trigger. The study would identify local sources causing the elevated SO₂ concentrations and address the issue through potential contingency measures including new SO₂ emission control requirements, fuel-switching requirements, stack reconfigurations, or new operating limits imposed through permit conditions, consent agreements or rules. Another contingency measure option is the implementation of partial or full nonattainment NSR permitting for new or modified major sources of SO₂ in the Jackson County SO₂ nonattainment area. The State would implement the selected contingency measures as expeditiously as practicable, but not later than 24 months after an action-level trigger has occurred.

The EPA is proposing to find that Missouri's maintenance plan meets the "Contingency Measures" requirement.

The EPA proposes to conclude that the maintenance plan adequately addresses the five basic components of a maintenance plan: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. Therefore, the EPA proposes to find that

the maintenance plan SIP revision submitted by Missouri for the Jackson County 2010 SO₂ nonattainment area meets the requirements of section 175A of the CAA and proposes to approve the plan.

VI. What are the Actions the EPA is Proposing to Take?

The EPA is proposing to approve the maintenance plan for the Jackson County 2010 SO₂ 1-hour NAAQS nonattainment area into the Missouri SIP (as compliant with CAA section 175A). The maintenance plan demonstrates that the area will continue to maintain the 2010 1-hour SO₂ NAAQS and includes a process to select identified potential contingency measures to remedy any future violations of the 2010 1-hour SO₂ NAAQS and procedures for evaluation of potential violations.

Additionally, the EPA is proposing to determine that the Jackson County 2010 SO₂ 1-hour NAAQS nonattainment area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 2010 1-hour SO₂ NAAQS. On this basis, the EPA is proposing to approve Missouri's redesignation request for the area. Final approval of Missouri's redesignation request would change the legal designation of the portion of Jackson County designated nonattainment at 40 CFR part 81 to attainment for the 2010 1-hour SO₂ NAAQS.

VII. Environmental Justice Concerns

When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the U.S. as either nonattainment, attainment, or unclassifiable. Area designations address environmental justice concerns by ensuring that the

public is properly informed about the air quality in an area. If an area is designated nonattainment of the NAAQS, the CAA provides for the EPA to redesignate the area to attainment upon a demonstration by the state authority that air quality is attaining the NAAQS and will continue to maintain the NAAQS in order to ensure that all those residing, working, attending school, or otherwise present in those areas are protected, regardless of minority and economic status. This action addresses a redesignation determination for the Jackson County, Missouri area. Under CAA section 107(d)(3), the redesignation of an area to attainment/unclassifiable is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. As discussed in this document and the associated technical support document, Missouri has demonstrated that the air quality in the Jackson County area is attaining the NAAQS and will continue to maintain the NAAQS. Therefore, this proposed action does not result in disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples.

VIII. Incorporation by Reference

In this document, the EPA is proposing to amend regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Missouri State Implementation Plan described in the proposed amendments to 40 CFR part 52 set forth

below. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IX. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), redesignation of an area to attainment and the accompanying approval of a maintenance plan are actions that affect the status of a geographical area and do not impose additional regulatory requirements on sources beyond those imposed by State law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, if they meet the criteria of the CAA. Accordingly, these actions merely approve State law as meeting Federal requirements and do not impose additional requirements beyond those imposed by State law. For these reasons, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders

12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- This action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous

peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The basis for this determination is contained in Section VII of this action, "Environmental Justice Concerns."

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Maintenance plan, Redesignation, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control, Designations, Intergovernmental relations, Redesignation, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: _____
October 12, 2021.

Edward H. Chu,
Acting Regional Administrator,
Region 7.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR parts 52 and 81 as set forth below:

PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA-Missouri

2. In §52.1320:

a. The table in paragraph (d), as proposed to be amended at 86 FR 34177, June 29, 2021, is further amended by adding the entry “(35)” in numerical order.

b. The table in paragraph (e) is amended by adding the entry “(81)” in numerical order.

The additions read as follows:

§52.1320 Identification of plan.

* * * * *

(d) ***

EPA-APPROVED MISSOURI SOURCE-SPECIFIC PERMITS AND ORDERS

Name of source	Order/Permit number	State effective date	EPA Approval date	Explanation
* * * * *				

(35) Vicinity Energy- Kansas City	Consent Agreement No. APCP-2021-007	6/25/2021	[Date of publication of the final rule in the Federal Register], [Federal Register citation of the final rule]	
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(e) ***

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulator y SIP revision	Applicable geographic or nonattainm ent area	State submittal date	EPA approval date	Explanation
* * * * *				
(81) Jackson County 1- hour SO ₂ NAAQS Maintenance Plan and Maintenance Plan Supplement	Jackson County	2/18/2021 ; 9/7/2021	[Date of publicati on of the final rule in the Federal Register] , [Federal Register citation of the final rule]	This action approves the Maintenance Plan and the Maintenance Plan Supplement for the Jackson County area.

3. In §52.1343, add paragraph (c) to read as follows:

§52.1343 Control strategy: Sulfur dioxide.

* * * * *

(c) *Redesignation to attainment.* As of [date 30 days after
publication of the final rule in the Federal Register], the

Jackson County 2010 SO₂ nonattainment area is redesignated to attainment of the 2010 SO₂ 1-hour National Ambient Air Quality Standard (NAAQS) in accordance with the requirements of Clean Air Act (CAA) section 107(d)(3) and EPA has approved its maintenance plan and maintenance plan supplement as meeting the requirements of CAA section 175A.

PART 81-DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

4. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart C-Section 107 Attainment Status Designations

5. In §81.326, revise the entry "Jackson County, MO" in the table entitled "Missouri-2010 Sulfur Dioxide NAAQS [Primary]" to read as follows:

§81.326 Missouri.

* * * * *

Missouri-2010 Sulfur Dioxide NAAQS

[Primary]

Designated area ¹	Designation	
	Date ²	Type
Jackson County, MO	[Date 30 days after date of publication of the final rule in the Federal Register]	Attainment.

Jackson County (part)		
The portion of Jackson County bounded by I-70/I-670 and the Missouri River to the north; and, to the west of I-435 to the state line separating Missouri and Kansas.		
* * *	* *	* *

¹Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

²This date is April 9, 2018, unless otherwise noted.

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[FR Doc. 2021-22746 Filed: 10/25/2021 8:45 am; Publication Date: 10/26/2021]